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PATEL INDIA (PRIVATE) LTD.

v.

UNION OF INDIA & OTHERS

(with connected petition)

March 28, 1973

B

[J. M. SHELAT ACTING C.J. AND Y. V. CHANDRACHUD, J.]

Sea Customs Act, 1878—*S.* 40—*Whether refund of excess import duty comes under the Section.*

The appellant Company was the sole distributing agent in India for the imported products of an American firm. The Customs authorities used to levy import duty on the basis of the invoice price under s. 29 read with s. 30 of the Sea Customs Act, 1878, as being the real value of the goods so imported.

C

During 1954-55, the appellant Company imported several items set out in Annexure 'D' of the Special Leave Petition. When items 1 and 2 arrived in Bombay Port, the Custom authorities, ignoring their hitherto followed practice, refused to accept the invoice price as the real value and levied excess duty. An appeal to the Customs Collector failed, whereupon the appellant Company lodged a revision application before the Government of India.

D

Pending the disposal of the said revision, several other items set out in Annexure 'D' arrived in Bombay Port and the Customs authorities charged the Appellant-Company with excess amounts as import duty. For fear of demurrage charges, the appellant-Company paid the excess duty under protest.

E

In March, 1957, the Government of India disposed of the said revision, accepting the appellants' contention, and directed re-assessment of import duty on the said two items 1 and 2 on the basis of their invoice price and also ordered refund of the excess duty charged on them.

The appellant-Company, however, did not file appeals in respect of the other items which had arrived during the pendency of the said revision, although the Customs had levied excess duty thereon.

F

The Customs authorities refunded the excess duty levied on those items, for which application for refund was made within the time prescribed under s. 40, but refused refund in respect of the rest of the items.

An appeal to the Collector and a revision before the Government of India were both rejected. The appellant company, thereafter, filed a writ petition before the Delhi High Court for appropriate relief, but was without success.

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The respondent contended before the Court that whatever claims were found not in time as required by s. 40 of the Sea Customs Act have been correctly rejected by the Appraiser of Customs, Bombay, and therefore, the appellant-Company had no claim. Allowing the appeal,

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HELD: (1) After the disposal of the revision by the Government of India, there was no doubt that the invoice prices were the real value of the consignments and the Custom authorities had no right in law to charge extra duty on the rest of the consignments. Indeed, the excess duty was charged in violation of Sections 29 and 30 and in excess of

jurisdiction. This position was also accepted by the Custom authorities when they ordered refund of excess duty charged by them in relation to items 22 to 29 and 33 to 35. [815H] A

(ii) Section 40 had no application in the present case. Section 40 clearly applies only to cases where duties have been paid through inadvertence, error or misconstruction, and where refund application has to be made within 3 months. The present case is not one where the excess duty was paid through any of the 3 reasons set out in Section 40. The excess duty was demanded on the ground that the invoice price was not the real value of the imported goods. Since s. 40 did not apply to the facts of the case, the respondents could not retain the excess duty illegally. [816 D] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1799 of 1969. C

Appeal by special leave from the judgment and order dated April 5, 1967 of the Delhi High Court at New Delhi in letters Patent Appeal No. 44 of 1967 and Writ Petition No. 181 of 1967.

Petition under Article 32 of the Constitution of India for the enforcement of fundamental rights. D

N. S. Bindra, S. K. Dholakia and *Vineet Kumar*, for the appellant and petitioner.

S. N. Prasad and *S. P. Nayar*, for the respondents.

The Judgment of the Court was delivered by E

SHELAT, ACTING C.J.—At all material times, the appellant-company acted as the sole distributing agent in India for the products of M/s. Sawyer's Inc., Portland, U.S.A., and as such used to import Viewmaster stereoscopes, reels etc. The custom authorities used to levy import duty on the basis of the invoice price under s. 29 read with s. 30 of the Sea Customs Act, 1878 as being the real value of the goods so imported. F

During the year 1954-55, the appellant-company imported several items set out in Annexure 'D' to the appellant's special leave petition, the details of which it is not necessary to set out here. When items 1 and 2 arrived in Bombay port, the customs authorities, ignoring their hitherto followed practice, refused to accept the invoice price as the real value and levied excess duty in the aggregate sum of Rs. 1356. An appeal to the Customs Collector failed whereupon the appellant-company lodged a revision application before the Government of India. G

Pending the disposal of the said revision, several other items set out in the said annexure 'D' arrived in Bombay port, in respect of which the Customs, refusing to accept their invoice price, H

A charged the appellant-company with excess amounts as import duty. For fear that demurrage charges would have to be incurred, the appellant-company paid the excess duty charged as aforesaid, but under protest.

On March 20, 1957, the Government of India disposed of
B the said revision, accepting the appellant's contention, and directed reassessment of import duty on the said two items 1 and 2 on the basis of their invoice price and also ordered refund to the appellant-company of the excess duty charged on them.

It would seem that since the said revision was pending before the Government of India, the appellant-company thought that
C the Customs would follow the principle which would be laid down in the decision in the said revision. The appellant-company, therefore, abstained from filing appeals in respect of the other items, which had arrived pending the decision of the said revision although the Customs had levied excess duty thereon. On the said revision being disposed of and the Government having therein ordered refund, the appellant-company applied for refund
D of the excess duty charged in respect of some of the items, *viz.*, items 22 to 29 and 33-35. This was done under s. 40 of the Act and within the period appointed therein. The Customs granted refund on the aforesaid items 22 to 29 and 33-35, although invoice value thereof had not been accepted, and excess duty had been charged. The customs authorities, however, declined
E to refund the excess duty in respect of the rest of the items. The reason given for such refusal was that the application for refund in respect of those items had not been made within the time prescribed by s. 40. An appeal to the Collector and a revision before the Government of India against the said refusal to grant refund were both rejected, the refusal by the Customs appraiser being con-
F firmed on the ground that refund was not applied for in time under sec. 40.

The appellant-company thereupon filed a writ petition in the High Court of Punjab (at Delhi) under Art. 226 of the Constitution pleading *inter alia* that :

(a) Sec. 40 of the Act had no application,

G (b) the Union of India was not entitled to appropriate or retain the said excess duty,

(c) the appellant-company had a legal right to the return of the said excess duty, and

(d) that there was an error apparent on the record in the orders refusing return of the excess duty.

H The appellant-company on these pleas prayed that the said orders of refusal should be quashed and an order should be passed directing return of the excess duty.

In para 16, sub-paras (i) and (j) of its return the Union of India averred as follows : A

"(i) with reference to clause (1) of para No. 16 of the petition, it is correct that the Government of India cannot appropriately retain to whatever they are not legally entitled. But I submit that the importers are also required to put in the B claims in time as required by law. I deny that the petitioner has a legal right to the return of the excess customs duty levied on all the consignments.

(j) I deny and controvert the allegations made in clause (J) of para No. 16 of the petition. I say C that the Bombay Customs House allowed some claims of the petitioner which were in time under section 40 of the Sea Customs Act, out of the list forwarded with their letter dated 3-4-1957."

Para 17 of the return was as follows : D

"I deny para No. 17 of the petition. I submit that whatever claims were found not in time as required by section 40 of the Sea Customs Act have been correctly rejected by the Appraiser of Customs, Bombay."

It is clear from the return by the Union of India that : E

(a) refund was granted to the appellant-company in respect of the items referred to above without any appeal having been filed by the company relating to those items,

(b) refund was granted in respect of those items simply on the ground that an application therefor had been made within the time prescribed by F sec. 40, and it was refused in respect of the rest of the items only because such an application therefor was not made within the time prescribed by sec. 40, and

(c) there was no plea that the excess duty was rightly charged on those items. G

The learned Single Judge of the High Court who heard the writ petition held that sec. 40 of the Act did not apply; that it applied to erroneous payments and not to erroneous assessments. He, however, held that the proper remedy for the appellant-company was to have filed appeals against such erroneous assessments H under s. 188 of the Act, and that that having not been done, no relief could be granted to the appellant-company. He, however, observed that the Government was morally bound to grant the

refund and made a recommendation that the refund should be made to the appellant-company. A Letters Patent appeal against the said julgment was rejected. Hence this appeal by special leave.

The only question which arises in this appeal is whether the High Court ought to have granted in the circumstances of the case the relief asked for by the appellant-company in its writ petition.

Sec. 29 of the Act casts a duty on the owner of imported goods, whether liable to duty or not, to state the real value, quantity and description of such goods in the bill of entry or the shipping bill and to subscribe a declaration of the truth of such statement at the foot of such bill. In case of doubt, tht Customs Collector has the power to require such owner or any one else in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity and description of any such goods can be ascertained. An invoice thus is one of the documents from which the real value of imported goods has to be ascertained where the Customs Collector has any doubt as regards their declared value. Sec. 30 then defines 'real value' to be the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold or are capable of being sold at the time and place of importation. Sec. 31 provides that goods chargeable with duty upon the value thereof but for which a specific value is not fixed by law for the purpose of levying duties thereon, shall, without unnecessary delay, be examined by the officer of customs. If it appears that the real value of such goods is correctly stated in the bill of entry or shipping bill, the goods shall be assessed in accordance therewith.

There is no dispute that the appellant-company had declared the real value of the articles imported by it and in support thereof had produced the manufacturers' invoices. The customs authorities had refused to accept the invoice price as real value and charged excess duty. But any doubt with regard to the real value of the several consignments imported by the company was totally eradicated when the Government of India decided the company's revision and directed that the invoice price should be accepted and duty should be assessed accordingly. In respect of the two items to which the revision related, the Government had also directed refund of the excess duty charged and paid under protest. There was thus no doubt or dispute left thereafter as regards the invoice prices being the real value of the consignments. The direction given in its decision in the said revision that the invoice price should be accepted as real value within the meaning of sec. 30 of the Act applied to the rest of the consignments. The customs authorities, therefore, were not right in law in charging excess duty on the rest of the consignments. Indeed, the excess duty was charged in violation of ss. 29 and 30 and in excess of jurisdiction, since, as held

by the Government of India, the real value of the goods was their invoice price. A

The position, indeed, was accepted by the customs authorities when they ordered refund of excess duty charged by them in relation to items 22 to 29 and 33-35. Such refund could only have been ordered on the footing that the excess duty on those consignments had been charged without the authority of law and therefore without jurisdiction. The fact that an application had been made therefor under sec. 40 was irrelevant to the point that the excess duty was assessed and recovered without the authority of law. B

Sec. 40, on which the Union of India relied in its return, provides that no customs duties or charges which have been paid, and of which repayment wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be returned, unless such claim is made within three months from the date of such payment. The section clearly applies only to cases where duties have been paid through inadvertence, error or misconstruction, and where refund application has to be made within three months from the date of such payment. C D

As rightly observed by the High Court, the present case was not one where the excess duty was paid through any of the three reasons set out in s. 40. The excess-duty was demanded on the ground that the invoice price was not the real value of the imported goods and payment under protest was also made on that footing. The ultimate result in the appellant-company's revision was that charging of excess duty was not warranted under the Act, and that the value on which duty should have been assessed was the invoice price and nothing else. That being the position, sec. 40 did not apply and could not have been relied upon by the customs authorities for refusing to refund the excess duty unlawfully levied on the appellant-company. E F

From the fact that the customs authorities refunded the excess duty on items 22 to 29 and 33-35, it follows that the customs authorities had fully realised that the excess-duty had been levied without the authority of law, for otherwise they would not have agreed to refund it, and further that they could not lawfully retain it. If the customs authorities were not entitled to levy the excess duty and retain it, they were bound to return it to the appellant-company who had paid it under protest and only with a view not to incur demurrage charges, unless there was some provision of the Act which debarred the appellant-company from recovering it. G H

The only provision relied on by the customs-authorities was sec. 40 of the Act. Indeed, their refusal to refund the excess-duty

A both in their return and in the High Court was on the ground of the omission of the appellant-company to apply for the refund within the time provided by that section. It is necessary to emphasise that it was not their case that the invoice price of the items in question was not the real value or that the excess duty was lawfully levied or that the appellant-company was not entitled B to the refund thereof for any reason except the omission to apply for it within the time prescribed by sec. 40. But since sec. 40 did not apply to the facts of the case, the respondents could not retain the excess duty except upon the authority of some other provision of law. No other provision was pointed out by them which would disentitle the appellant-company to the refund on C the ground of its rights being time-barred or otherwise. No such provision other than sec. 40 which disentitled the appellant-company to the refund having been put forward and the customs authorities not being entitled to retain the excess duty, there was a legal obligation on the part of the respondents to return the excess duty and a corresponding legal right in the appellant-company to recover it. Besides, except s. 40 the Act contains no D other provision laying down any limitation within which an importer has to apply for refund. The refusal to return the excess duty on the ground that the appellant-company had not applied within time provided by the Act was clearly unsustainable. Since there was not and could not be any dispute with regard to the invoice price being the real value there was no point in filing any E appeal; nor could the omission to file any such appeal be a proper or valid ground for refusing relief to the appellant-company, when there remained no longer any dispute between the parties as to the invoice price being the real value of the imported items.

For the reason aforesaid, we are satisfied that the High Court was not right in refusing the relief, in spite of its being satisfied F that the excess duty was charged without any basis in law and also that the respondents could not lawfully retain the excess duty. In the circumstances we set aside the judgment of the High Court and allow the appeal. The respondents will pay to the appellant-company its costs both here and in the High Court. In view of this conclusion no separate order need be passed in writ petition 181 G of 1967. The writ petition accordingly stands disposed of.

S.C. *Appeal allowed.*